

1                   IN THE UNITED STATES DISTRICT COURT  
2                   FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

3 UNITED STATES OF AMERICA            )  
  )  
4                   vs.                    )  
  )  
5 MARKO RUDI                            )     DOCKET NO. 1:07CR412-1  
  )     Winston-Salem, North Carolina  
  )     November 3, 2009  
  )     10:01 a.m.

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7                   TRANSCRIPT OF THE **MOTION HEARING/STATUS CONFERENCE**  
8                   BEFORE THE HONORABLE THOMAS D. SCHROEDER  
9                   UNITED STATES DISTRICT COURT JUDGE

10 APPEARANCES:

11 For the Government:           BOB HAMILTON, AUSA  
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20 Court Reporter:               BRIANA NESBIT, RPR  
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24                   Proceedings recorded by mechanical stenotype reporter.  
25                   Transcript produced by computer-aided transcription.

## P R O C E E D I N G S

(The Defendant was present.)

**THE COURT:** Mr. Hamilton, do you want to call the next matter?

**MR. HAMILTON:** The next matter is United States versus Marko Rudi, 1:07CR412, here for purposes of a status conference. Mr. Rudi is represented by Chris Clifton and David Long.

**THE COURT:** All right. Good morning.

**MR. LONG:** Good morning, Your Honor.

**MR. CLIFTON:** Good morning, Your Honor.

**THE COURT:** All right. I received a motion to continue in the case. I presume that's what we are here for?

**MR. HAMILTON:** Yes, sir.

**THE COURT:** Does anybody want to be heard further?

**MR. LONG:** Well, Your Honor, we'd like to have a status conference. We've got scheduling issues and other issues that I think we would like to take up with the Court, if you have the time today.

**THE COURT:** All right. I would be happy to do that. Why don't you tell me what the problems seem to be.

**MR. LONG:** Well, Mr. Rudi is an Estonian citizen who was indicted, I believe, in February of '08. It look almost 11 months for him to be extradited. He's been back in the United States since late August.

1           **THE COURT:** Is there any language issue?

2           **MR. LONG:** Well, he is fluent. Does he understand  
3 every word in every context? No. We've talked a little bit  
4 about whether we need an interpreter. He might feel  
5 comfortable with a standby interpreter, but it is not an issue  
6 like it was in the prior case. Mr. Rudi speaks very good  
7 English.

8           **THE COURT:** All right. Mr. Rudi, if at any time  
9 today you feel like you don't understand what was said, I am  
10 going to ask you to advise me or your counsel so that -- we  
11 will proceed under the presumption that you understand these  
12 proceedings because your counsel says you are fluent in  
13 English.

14           **THE DEFENDANT:** Thank you.

15           **THE COURT:** If there is any problem and you don't  
16 understand, you need to advise the Court and tell me that you  
17 don't understand; and then we'll take it up at that time.  
18 Okay, sir?

19           **THE DEFENDANT:** Thank you, Your Honor.

20           **MR. LONG:** If Your Honor, please, the extradition  
21 order from Estonia -- Mr. Rudi was indicted on five counts.  
22 The extradition order from Estonia extradited him on two counts  
23 out of the five. They refused to extradite on three of the  
24 counts.

25           Now, as I understand, the full extradition order has not

1 reached the court file translated. We got a partial  
2 translation from Patrick Auld. I don't know how the Court  
3 wants us to approach that issue. Do you want us to do that by  
4 motion?

5 We are looking for guidance. I have never done this  
6 before. I presume the Court hasn't either.

7 **THE COURT:** I can assure you I have not.

8 **MR. LONG:** So we've got that issue, and we've got to  
9 determine it somewhere along the line.

10 **THE COURT:** He's been extradited on which counts?

11 **MR. LONG:** One and Three.

12 **THE COURT:** It is a five-count indictment, you say?

13 **MR. LONG:** It is a five-count indictment, and he was  
14 also not extradited under 18 U.S.C. 2, which is in all five of  
15 the counts.

16 So I don't know whether the Government is going to consent  
17 to a trial on the indictment as the extradition order read or  
18 whether they are going to contest it, but that's an issue that  
19 we've got to deal with and I would think --

20 **THE COURT:** Why don't we pause right there.

21 Mr. Hamilton?

22 **MR. HAMILTON:** Your Honor, there is, as I understand  
23 it, a recent either revision to the treaty with Estonia or a  
24 new treaty has been entered into or is in the process of being  
25 entered into.

1       It is my understanding that we are attempting to seek the  
2 permission for the other three counts as well. So I don't  
3 think that's necessarily a dead issue at this point. So,  
4 certainly, we've been given permission to proceed on two  
5 counts, but we think we will also eventually receive permission  
6 on the other three counts as well.

7           **THE COURT:** Do you have any idea what the timing of  
8 that might be?

9           **MR. HAMILTON:** Your Honor, I think if -- within the  
10 parameters of the continuance that's been asked for by the  
11 defense. We would hope within 60 to 90 days. We are checking  
12 with our Office of International Affairs on that right now,  
13 Your Honor.

14          **MR. LONG:** If Your Honor, please, Mr. Rudi has got  
15 counsel in Estonia who are dealing with those issues.

16          **THE COURT:** Give me just a minute. (Reading.)

17       Okay. Well, as to that issue, it sounds like the answer  
18 will be determined most likely before a trial date, if we get a  
19 continuance until -- is it April that you are asking for; is  
20 that right? I can't remember the date that you asked for.

21          **MR. LONG:** I think so, Your Honor. Yes, indeed.

22          **THE COURT:** Is there anything else at this time you  
23 are asking that the Court do?

24       It sounds like the Government is proceeding with efforts  
25 to attempt to determine whether Counts Two, Four, and Five can

1 be the basis of the extradition as well, and at this time I am  
2 not sure there is really anything before me that I can resolve.

3 **MR. LONG:** I agree with that completely. Not on that  
4 issue at all.

5 **THE COURT:** All right.

6 **MR. LONG:** We've got some other issues. We've been  
7 working as best we can. Patrick Auld had this case, is the one  
8 who indicted this case, and he is the one who has done  
9 everything on this case. We are in transition within the U.S.  
10 Attorney's Office.

11 But as far as the discovery is concerned, we have seen  
12 parts of the discovery. We haven't -- all the discovery hasn't  
13 been made available to us. Mr. Auld said that he was going to  
14 get copies of certain of the discovery that we had noted.

15 We've got logistics issues because we have an accountant,  
16 a CPA, we are going to have to -- we have engaged to deal with  
17 financial issues. As a practical matter, Mr. Auld indicated he  
18 was going to get that financial information to us. The  
19 accountant is going to have a lot of difficulty going in and  
20 examining the records in the U.S. Attorney's Office. So we've  
21 got that logistics issue.

22 We've got to, you know -- we haven't had any problems  
23 dealing with them; but I think probably because of the  
24 transition we haven't got copies, and I guess we marked it  
25 three or four weeks ago.

1           **THE COURT:** Do you know what -- well, let me back up.  
2 So you reviewed things; and you are saying that you asked for  
3 copies of that, and you haven't gotten them yet?

4           **MR. LONG:** Right. They indicated they were going to  
5 get copies. Again, I believe it is probably just part of this  
6 transition process we are going through. I am not blaming  
7 anybody.

8           **THE COURT:** Let me stop there. Can you address that,  
9 Mr. Hamilton?

10          **MR. HAMILTON:** Yes, Your Honor. Mr. Auld -- we are  
11 making a transition, as Mr. Long said. Mr. Auld has had some  
12 family health issues, and he's been traveling quite a bit to  
13 resolve those; but I have met with him and so has Mr. Chut.  
14 We'll get copies of things.

15          **THE COURT:** What do you think is a reasonable period  
16 of time where you can do that?

17          **MR. HAMILTON:** I obviously don't know the volume of  
18 what they've requested. We can certainly do it in stages so  
19 they have something to work with.

20          **THE COURT:** Can you give some sense of what the  
21 volume is?

22          **MR. LONG:** Boxes -- the stuff that we've marked?

23          **THE COURT:** Yes.

24          **MR. CLIFTON:** Probably 4-, 500 pages.

25          **THE COURT:** Okay.

1           **MR. LONG:** It is not an enormous amount relative to  
2 the whole.

3           **THE COURT:** Is there any problem doing that in two  
4 weeks, do you think?

5           **MR. HAMILTON:** No, Your Honor. Typically, what I  
6 would like to do is to scan the documents. I will give --  
7 unless for some reason they would want to have hard copies  
8 because of the signatures or whatever, I would scan it and give  
9 Mr. Clifton and Mr. Long a disk.

10          Mr. Clifton and I have had several long cases together. I  
11 am confident that we can work out the discovery amicably, Your  
12 Honor.

13          Two weeks, I think -- if there is a problem, Your Honor,  
14 with that -- again, I am a little bit at a disadvantage because  
15 I am not sure exactly -- I don't have a real good grip on this  
16 case yet.

17          **THE COURT:** I understand.

18          **MR. HAMILTON:** I think we can certainly within two  
19 weeks make a significant production. If we can't get it all to  
20 them, we'll explain it to the Court in a letter. If you can  
21 give us two weeks, I think I can put a lot of stuff their way,  
22 and I think that will get them going.

23          **THE COURT:** I'll -- go ahead.

24          **MR. LONG:** Excuse me. There is no need for you to be  
25 involved in this. I am sure we can work this out.



1           **THE COURT:** Do you want a deadline?

2           **MR. LONG:** No. I am satisfied. Now that we've got  
3 the issue out, I think it is something that's easy to work out.

4           **MR. HAMILTON:** We'll take care of it, Judge.

5           **THE COURT:** Well, if there is a continuance, which it  
6 looks like there will be, and -- the case has been around for a  
7 while. I understand there were issues getting extradition and  
8 probably other matters.

9           If there is a delay and you are not satisfied, then it is  
10 incumbent upon you all, Mr. Long and Mr. Clifton, to make some  
11 kind of motion and bring it to my attention because I will be  
12 happy to prod things along, particularly if there is a  
13 continuance yet of another trial date.

14           Don't sit on your rights I guess is what I am advising. I  
15 know you won't, but I am advising you all to stay on top of it  
16 and bring it to my attention, and we'll deal with it.

17           **MR. LONG:** Okay. Two other issues that we have:  
18 One, we'd like to issue some Rule 17 subpoenas. I think we can  
19 do that ex parte under the rule. We would just like to alert  
20 the Court that we will likely do that sometime soon under Rule  
21 17(c).

22           **THE COURT:** All right.

23           **MR. LONG:** We would propose just to submit those to  
24 you in camera and let the Court make its decision from there.  
25 I believe we can do that ex parte, and that's what we would

1 like to do.

2           **MR. HAMILTON:** Judge, I am not sure exactly what we  
3 are talking about. I don't have my book in front of me, but if  
4 we are referring to -- are we referring to the depositions of  
5 foreign witnesses?

6           **MR. LONG:** No. That's another topic that we need to  
7 talk about, too. This is just a matter of using Rule 17 to get  
8 documents before trial so we can use them in preparation.  
9 17(c) is the --

10           **MR. HAMILTON:** The only time I am familiar with the  
11 Court having to get involved in the subpoena process for the  
12 defense counsel, Your Honor, is if the defense counsel are  
13 appointed counsel.

14           **THE COURT:** Right. That's why I was just looking at  
15 the list.

16           **MR. HAMILTON:** I am a little puzzled by the reference  
17 that the Court would need to get involved in a subpoena by a  
18 privately-retained attorney.

19           **MR. LONG:** I believe this rule provides for subpoenas  
20 prior to trial, Your Honor.

21           **THE COURT:** Let me take a look at it. (Reading.) It  
22 looks like under 17(a) you can do it and 17(c). 17(b) applies  
23 only where the defendant is unable to pay. He has obviously  
24 got retained counsel here.

25           That would be the ordinary practice in civil proceedings.

1 I guess it doesn't come up much in criminal cases.

2 **MR. LONG:** I used it maybe once or twice in a case in  
3 another district.

4 **THE COURT:** I am not sure that I have to be involved  
5 in the process.

6 **MR. LONG:** Well, the way I did it in the past, and as  
7 I say only one time, is I got the judge to issue an order  
8 directing that the subpoena issue.

9 **THE COURT:** Well, under 17(a), it looks like you  
10 don't need me to do that, the way I read it: "The clerk must  
11 issue a blank subpoena -- signed and sealed -- to the party  
12 requesting it." So it is a sealed subpoena, and you fill in  
13 the blanks and you serve it.

14 **MR. LONG:** All right. We will do that. If we need  
15 the Court's intervention at some time, we'll come back.

16 **THE COURT:** The only exception to that appears to be  
17 under 17(c)(3). If the subpoena requires production of  
18 personal or confidential information about a victim, then the  
19 Court has to give notice to the victim so they can move to  
20 quash.

21 **MR. LONG:** We will proceed to issue the subpoenas;  
22 and if we need Court intervention, we will come back.

23 **THE COURT:** I haven't looked at the cases on it. I  
24 presume there are cases that say that under 17(a) it means what  
25 it says and, that is, you are free to do that on your own; and

1 they are to be issued under seal. If you have any trouble with  
2 the clerk's office in that regard, just bring it to my  
3 attention and we'll take it up.

4 **MR. LONG:** We will do it.

5 I think the other issue that we need to just make the  
6 Court aware of at this point is that this case is likely to  
7 require -- we will have to take depositions outside the United  
8 States since there are a number of witnesses. A preliminary  
9 list would have maybe as many as a dozen, more or less, in  
10 Estonia and maybe an equal number in Dubai that we would have  
11 to make arrangements to take video depositions to preserve  
12 testimony for witnesses outside the jurisdiction of the United  
13 States.

14 **THE COURT:** All right.

15 **MR. HAMILTON:** Judge, we would oppose that. I think  
16 that would have to be briefed by the parties. We would require  
17 that the witnesses actually appear before the jury.

18 **THE COURT:** Okay. I don't know what the law is on  
19 that.

20 **MR. LONG:** Again, all I am wanting to do is bring it  
21 to the Court's attention. I don't disagree that we may have to  
22 brief it and bring it back. I did want to alert the Court that  
23 we have that possibility.

24 **THE COURT:** All right. I appreciate it. Okay. Any  
25 other issues you need to resolve today?

1 (Defendant's Counsel conferred.)

2 **MR. LONG:** Nothing further from us, Your Honor.

3 **THE COURT:** All right -- I'm sorry. Anything else?

4 **MR. LONG:** Nothing for the defendant, Your Honor.

5 **THE COURT:** Anything further from the Government?

6 **MR. HAMILTON:** No, sir.

7 **THE COURT:** Okay. If you have any issues on your  
8 interest in taking depositions, you are going to have to either  
9 get the Government's agreement or you are going to have to --  
10 and there may be more required than that. I haven't looked at  
11 the issue. I cannot imagine that it would not at least require  
12 the Government's agreement, but I haven't looked at the cases.  
13 You will have to brief it, I'm sure, if it turns out you want  
14 to try to preserve testimony in a criminal case in that manner.

15 Have you looked at the law on that?

16 **MR. LONG:** I have, Your Honor. We can't subpoena any  
17 of these people. It is beyond the subpoena power of the United  
18 States. I've looked at it, yes. Am I prepared to argue it  
19 today? No. But, yes, I have looked at it.

20 **THE COURT:** All right. Well, just make sure, when  
21 you get to that point, you give yourself advance notice so that  
22 it is not going to delay an April trial date --

23 **MR. LONG:** Absolutely.

24 **THE COURT:** -- so that you can have enough time to  
25 have it heard and resolved so that you can do what you want to

1 do and make your travel arrangements and all of that.

2 So the request is that the case be continued. It is  
3 Document 13, motion to continue by the defendant to the April  
4 term of court.

5 I was looking to see whether the Government had any  
6 opposition. Do you have any opposition?

7 **MR. HAMILTON:** We don't, Your Honor.

8 **THE COURT:** Is that going to be sufficient time where  
9 April is a pretty solid date for a trial, or is there going to  
10 be any concern that that is not enough time? I am not offering  
11 to give you anymore. I am just trying to make sure you are  
12 solid on that date.

13 **MR. LONG:** As we stand here today, we are pretty  
14 solid on that, Your Honor.

15 **MR. CLIFTON:** The two issues that can push it out --  
16 this extradition issue is an issue of first impression between  
17 the U.S. and Estonia. My understanding is it's gotten very  
18 complicated between our federal government and their courts.  
19 Mr. Hamilton has said he thinks 60 to 90 days as a result of  
20 that. That could drag on.

21 The other issue would be if we have travel restrictions on  
22 our ability especially to get back and forth to the Middle  
23 East. We don't foresee those now, but I will let the Court  
24 know that those are issues we've talked about.

25 **THE COURT:** All right.

1           **MR. HAMILTON:** Judge, the only issue is our case  
2 agent -- his wife is expecting a child in March. He is  
3 stationed overseas. We would hope that that would be an  
4 uneventful event; but, apparently, if there is any  
5 complications where he is stationed, which he is stationed in  
6 the Philippines, he would have to travel perhaps back to the  
7 United States with his wife. That might push us back a month  
8 or so. Hopefully, his wife will have the baby in March, and  
9 he'll be available in April. We would need our case agent.

10           **THE COURT:** All right. By granting the continuance,  
11 it looks like you all have, on the defense side, agreed to  
12 waive speedy trial for the continuance period.

13           Is there agreement as to the time period -- the April date  
14 that I am going to set it for is April the 12th, which is the  
15 trial week of the April term of court. So I will eliminate  
16 from the calculation from speedy trial a period up to April the  
17 12th. I would be prepared normally to do that from today until  
18 then unless there is some other agreement you all have entered  
19 into as to the time period.

20           **MR. HAMILTON:** No, Your Honor, that would be fine.

21           **MR. LONG:** That's fine with us, Your Honor.

22           **THE COURT:** All right. So I will enter an order  
23 eliminating from the speedy trial calculation the period from  
24 November 3, 2009, up to and including April 12, 2010; and the  
25 case will be set on the April criminal term for April 12, 2010.

1        Now, I would strongly advise that as you get close to that  
2 date, particularly, if you are going to have some scheduling  
3 issues, that you either request a status conference or you file  
4 something to advise the Court what your needs are for  
5 scheduling purposes so you don't get caught up in a list of  
6 criminal cases that are set for trial where you're not given  
7 some kind of indication of what your time period may be.

8            **MR. LONG:** We will keep you advised, Your Honor.

9            **THE COURT:** Anything further that you need today?

10          **MR. LONG:** Not today.

11          **MR. HAMILTON:** Thank you, Your Honor.

12          **THE COURT:** Thank you.

13          (END OF PROCEEDINGS AT 10:26 A.M.)

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1 UNITED STATES DISTRICT COURT  
2 MIDDLE DISTRICT OF NORTH CAROLINA  
3 CERTIFICATE OF REPORTER  
4  
5

6 I, Briana L. Nesbit, Official Court Reporter,  
7 certify that the foregoing transcript is a true and correct  
8 transcript from the record of the proceedings in the  
9 above-entitled matter.

10  
11 Dated this 13th day of January 2010.  
12  
13

14 //s//Briana L. Nesbit  
15 Briana L. Nesbit, RPR  
16 Official Court Reporter  
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